

HOUSE BILL No. 1118

DIGEST OF INTRODUCED BILL

Citations Affected: IC 32-30; IC 36-7-9.

Synopsis: Nuisance actions by community organizations. Allows a community organization within whose specific geographic boundaries a nuisance exists to bring an action under the laws governing: (1) general nuisance actions; (2) actions for indecent nuisances; and (3) actions for drug nuisances; as applicable. Makes the drug nuisance law consistent with the indecent nuisance law by adding the attorney general to the list of prosecuting officials that may bring an action under the drug nuisance law. Defines "nuisance" for purposes of the unsafe building law. Allows a civil action under the unsafe building law to be initiated before the final date of an order or an extension of an order requiring: (1) the completion; or (2) a substantial beginning toward accomplishing the completion; of the remedial action required by the order. Allows a community organization to initiate a civil action under the unsafe building law if the enforcement authority for the county or municipality has filed a civil action regarding the unsafe premises. (Current law prohibits a community organization from initiating a civil action if the enforcement authority has filed an action.) Provides that a community organization must provide notice of its intention to file a civil action under the unsafe building law at least 30 days (rather than 60 days under current law) before commencing the action. Eliminates the requirement that the notice must be given to the enforcement authority.

Effective: July 1, 2010.

Day

January 5, 2010, read first time and referred to Committee on Courts and Criminal Code.

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Second Regular Session 116th General Assembly (2010)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2009 Regular and Special Sessions of the General Assembly.

HOUSE BILL No. 1118

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 32-30-6-1.2 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2010]: **Sec. 1.2. As used in this chapter, "community**
4 **organization" has the meaning set forth in IC 36-7-9-2.**
5 SECTION 2. IC 32-30-6-7, AS AMENDED BY P.L.82-2005,
6 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
7 JULY 1, 2010]: Sec. 7. (a) An action to abate or enjoin a nuisance may
8 be brought by any person whose:
9 (1) property is injuriously affected; or
10 (2) personal enjoyment is lessened;
11 by the nuisance.
12 (b) A civil action to abate or enjoin a nuisance may also be brought
13 by:
14 (1) an attorney representing the county in which a nuisance exists;
15 **or**
16 (2) the **corporation council or** attorney of any city or town in
17 which a nuisance exists; **or**



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1 **(3) a community organization within whose specific**
 2 **geographic boundaries (as defined in the bylaws or articles of**
 3 **incorporation of the community organization) the nuisance**
 4 **exists.**

5 (c) A county, city, or town that brings a successful action under this
 6 section (or IC 34-1-52-2 or IC 34-19-1-2 before their repeal) to abate
 7 or enjoin a nuisance caused by the unlawful dumping of solid waste is
 8 entitled to recover reasonable attorney's fees incurred in bringing the
 9 action.

10 (d) A forestry operation that successfully defends an action under
 11 this section is entitled to reasonable costs and attorney's fees incurred
 12 in defending the action.

13 SECTION 3. IC 32-30-7-0.5 IS ADDED TO THE INDIANA CODE
 14 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 15 1, 2010]: **Sec. 0.5. As used in this chapter, "community**
 16 **organization" has the meaning set forth in IC 36-7-9-2.**

17 SECTION 4. IC 32-30-7-4 IS AMENDED TO READ AS
 18 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 4. As used in this
 19 chapter, "prosecuting official" refers to public officials who have
 20 concurrent jurisdiction to enforce this chapter, including:

- 21 (1) the attorney general;
- 22 (2) the prosecuting attorney of the circuit in which an indecent
- 23 nuisance exists;
- 24 (3) the corporation counsel or city **or town** attorney of the city **or**
- 25 **town** (if any) in which an indecent nuisance exists; or
- 26 (4) an attorney representing the county in which an indecent
- 27 nuisance exists.

28 SECTION 5. IC 32-30-7-7 IS AMENDED TO READ AS
 29 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 7. (a) If an indecent
 30 nuisance exists:

- 31 **(1) a prosecuting official; or**
- 32 **(2) any resident of the county in which the indecent nuisance**
- 33 **exists; or**
- 34 **(3) a community organization within whose specific**
- 35 **geographic boundaries (as defined in the bylaws or articles of**
- 36 **incorporation of the community organization) the indecent**
- 37 **nuisance exists;**

38 may bring an action to abate the indecent nuisance and to perpetually
 39 enjoin the maintenance of the indecent nuisance.

40 (b) If a person ~~other than a prosecuting official described in~~
 41 **subsection (a)(2)** institutes an action under this chapter, the
 42 complainant shall execute a bond to the person against whom

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complaint is made, with good and sufficient surety to be approved by the court or clerk in a sum of at least one thousand dollars (\$1,000) to secure to the party enjoined the damages the party may sustain if:

- (1) the action is wrongfully brought;
- (2) the action is not prosecuted to final judgment;
- (3) the action is dismissed;
- (4) the action is not maintained; or
- (5) it is finally decided that the injunction ought not to have been granted.

The party aggrieved by the issuance of the injunction has recourse against the bond for all damages suffered, including damages to the aggrieved party's property, person, or character and including reasonable attorney's fees incurred in defending the action.

(c) A person **described in subsection (a)(2)** who institutes an action and executes a bond may recover the bond and reasonable attorney's fees incurred in trying the action if the existence of an indecent nuisance is admitted or established in an action as provided in this chapter.

(d) If a prosecuting official institutes an action under this chapter (or IC 34-1-52.5 or IC 34-19-2 before their repeal) and the existence of an indecent nuisance is admitted or established in the action, the governmental entity that employs the prosecuting official is entitled to all reasonable attorney's fees incurred by the entity in instituting the action. The fees shall be deposited in:

- (1) the state general fund, if the action is instituted by the attorney general;
- (2) the operating budget of the office of the prosecuting attorney, if the action is instituted by a prosecuting attorney;
- (3) the operating budget of the office of the corporation counsel or city **or town** attorney, if the action is instituted by a corporation counsel or city **or town** attorney; or
- (4) the county general fund, if the action is instituted by an attorney representing the county.

(e) In any action filed under this chapter by a person described in subsection (a)(3), a court may award reasonable attorney's fees, court costs, and other reasonable expenses of litigation to the prevailing party.

SECTION 6. IC 32-30-7-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 20. (a) This section applies to an indecent nuisance complaint under this chapter filed by a **private** person **described in section 7(a)(2) or 7(a)(3) of this chapter.**

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(b) The court shall not voluntarily dismiss the complaint unless:

(1) the complainant and the complainant's attorney, **if applicable**, file a sworn statement setting forth the reason why the action should be dismissed; and

(2) the dismissal is approved in writing or in open court by the prosecuting attorney of the circuit in which the alleged indecent nuisance is located.

(c) If the judge believes that the action should not be dismissed, the judge may direct the prosecuting attorney to prosecute the action to judgment at the expense of the county.

(d) If:

(1) the action is brought by a ~~private~~ person **described in section 7(a)(2) or 7(a)(3) of this chapter**;

(2) the court finds that there were no reasonable grounds or probable cause for bringing said action; and

(3) the case is dismissed either:

(A) for the reason described in subdivision (2) before trial; or

(B) for want of prosecution;

the costs may be taxed to the person who brought the case.

SECTION 7. IC 32-30-8-0.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 0.5. As used in this chapter, "community organization" has the meaning set forth in IC 36-7-9-2.**

SECTION 8. IC 32-30-8-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 4. An action to abate a nuisance under this chapter may be initiated by any of the following:

(1) The attorney general.

~~(1)~~ **(2)** The prosecuting attorney of the circuit where the nuisance is located.

~~(2)~~ **(3)** The corporation counsel or city ~~or town~~ attorney of a city ~~or town~~ in which a nuisance is located.

~~(3)~~ **(4)** An attorney representing a county in which a nuisance is located.

~~(4)~~ **(5)** The property owner.

(6) A community organization within whose specific geographic boundaries (as defined in the bylaws or articles of incorporation of the community organization) the nuisance exists.

SECTION 9. IC 32-30-8-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 5. (a) **Except as provided in section 6 of this chapter**, a person initiating an action under this chapter to abate a nuisance existing on a property shall, at

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1 least forty-five (45) days before filing the action, provide notice to:

2 (1) each tenant of the property; and

3 (2) the owner of record;

4 that a nuisance exists on the property.

5 (b) The notice required under this section must specify the
6 following:

7 (1) The date and time the nuisance was first discovered.

8 (2) The location on the property where the nuisance is allegedly
9 occurring.

10 (c) The notice must be:

11 (1) hand delivered; or

12 (2) sent by certified mail;

13 to each tenant and the owner of record.

14 (d) A person initiating an action to abate a nuisance under this
15 chapter shall:

16 (1) when notice is provided under this section, produce all
17 evidence in the person's possession or control of the existence of
18 the nuisance; and

19 (2) if requested by the owner, assist the owner in the production
20 of witness and physical evidence.

21 SECTION 10. IC 36-7-9-2, AS AMENDED BY P.L.88-2009,
22 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
23 JULY 1, 2010]: Sec. 2. As used in this chapter:

24 "Community organization" means a citizen's group, neighborhood
25 association, neighborhood development corporation, or similar
26 organization that:

27 (1) has specific geographic boundaries defined in its bylaws or
28 articles of incorporation and contains at least forty (40)
29 households within those boundaries;

30 (2) is a nonprofit corporation that is representative of at least
31 twenty-five (25) households or twenty percent (20%) of the
32 households in the community, whichever is less;

33 (3) is operated primarily for the promotion of social welfare and
34 general neighborhood improvement and enhancement;

35 (4) has been incorporated for at least two (2) years; and

36 (5) is exempt from taxation under Section 501(c)(3) or 501(c)(4)
37 of the Internal Revenue Code.

38 "Continuous enforcement order" means an order that:

39 (1) is issued for compliance or abatement and that remains in full
40 force and effect on a property without further requirements to
41 seek additional:

42 (i) compliance and abatement authority; or

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- 1 (ii) orders for the same or similar violations;
- 2 (2) authorizes specific ongoing compliance and enforcement
- 3 activities if a property requires reinspection or additional periodic
- 4 abatement;
- 5 (3) can be enforced, including assessment of fees and costs,
- 6 without the need for additional notice or hearing; and
- 7 (4) authorizes the enforcement authority to assess and collect
- 8 ongoing costs for continuous enforcement order activities from
- 9 any party that is subject to the enforcement authority's order.
- 10 "Department" refers to the executive department authorized by
- 11 ordinance to administer this chapter. In a consolidated city, this
- 12 department is the department of metropolitan development, subject to
- 13 IC 36-3-4-23.
- 14 "Enforcement authority" refers to the chief administrative officer of
- 15 the department, except in a consolidated city. In a consolidated city, the
- 16 division of development services is the enforcement authority, subject
- 17 to IC 36-3-4-23.
- 18 "Hearing authority" refers to a person or persons designated as such
- 19 by the executive of a city or county, or by the legislative body of a
- 20 town. However, in a consolidated city, the director of the department
- 21 or a person designated by the director is the hearing authority. An
- 22 employee of the enforcement authority may not be designated as the
- 23 hearing authority.
- 24 "Known or recorded fee interest, life estate interest, or equitable
- 25 interest of a contract purchaser" means any fee interest, life estate
- 26 interest, or equitable interest of a contract purchaser held by a person
- 27 whose identity and address may be determined from:
- 28 (1) an instrument recorded in the recorder's office of the county
- 29 where the unsafe premises is located;
- 30 (2) written information or actual knowledge received by the
- 31 department (or, in the case of a consolidated city, the enforcement
- 32 authority); or
- 33 (3) a review of department (or, in the case of a consolidated city,
- 34 the enforcement authority) records that is sufficient to identify
- 35 information that is reasonably ascertainable.
- 36 "Known or recorded substantial property interest" means any right
- 37 in real property, including a fee interest, a life estate interest, a future
- 38 interest, a mortgage interest, or an equitable interest of a contract
- 39 purchaser, that:
- 40 (1) may be affected in a substantial way by actions authorized by
- 41 this chapter; and
- 42 (2) is held by a person whose identity and address may be

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determined from:

(A) an instrument recorded in the recorder's office of the county where the unsafe premises is located;

(B) written information or actual knowledge received by the department (or, in the case of a consolidated city, the enforcement authority); or

(C) a review of department (or, in the case of a consolidated city, the enforcement authority) records that is sufficient to identify information that is reasonably ascertainable.

"Nuisance" has the meaning set forth in IC 32-30-6-6.

"Substantial property interest" means any right in real property that may be affected in a substantial way by actions authorized by this chapter, including a fee interest, a life estate interest, a future interest, a mortgage interest, or an equitable interest of a contract purchaser.

SECTION 11. IC 36-7-9-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 3.5. (a) An enforcement authority may administer and enforce this chapter in conjunction with any enforcement or civil action under IC 32-30-6, IC 32-30-7, IC 32-30-8, IC 36-1-6, IC 36-7-10.1, or IC 36-7-36.**

(b) A community organization may bring a civil action under section 17 of this chapter in conjunction with any civil action under IC 32-30-6, IC 32-30-7, or IC 32-30-8.

SECTION 12. IC 36-7-9-4, AS AMENDED BY P.L.66-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 4. (a) For purposes of this chapter, a building or structure, or any part of a building or structure, that is:**

(1) in an impaired structural condition that makes it unsafe to a person or property;

(2) a fire hazard;

(3) a hazard to the public health;

(4) a ~~public~~ nuisance;

(5) dangerous to a person or property because of a violation of a statute or ordinance concerning building condition or maintenance; or

(6) vacant and not maintained in a manner that would allow human habitation, occupancy, or use under the requirements of a statute or an ordinance;

is considered an unsafe building.

(b) For purposes of this chapter:

(1) an unsafe building; and

(2) the tract of real property on which the unsafe building is

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located;
are considered unsafe premises.

(c) For purposes of this chapter, a tract of real property that does not contain a building or structure, not including land used for production agriculture, is considered an unsafe premises if the tract of real property is:

- (1) a fire hazard;
- (2) a hazard to public health;
- (3) a ~~public~~ nuisance; or
- (4) dangerous to a person or property because of a violation of a statute or an ordinance.

SECTION 13. IC 36-7-9-4.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 4.5. (a) In Indiana, especially in urban areas, there exist a large number of unoccupied structures that are not maintained and that constitute a hazard to public health, safety, and welfare.

(b) Vacant structures often become dilapidated because the structures are not maintained and repaired by the owners or persons in control of the structures.

(c) Vacant structures attract children, become harborage for vermin, serve as temporary abodes for vagrants and criminals, and are likely to be damaged by vandals or set ablaze by arsonists.

(d) Unkept grounds surrounding vacant structures invite dumping of garbage, trash, and other debris.

(e) Many vacant structures are situated on narrow city lots and in close proximity to neighboring structures, thereby increasing the risk of conflagration and spread of insect and rodent infestation.

(f) Vacant, deteriorated structures contribute to blight, cause a decrease in property values, and discourage neighbors from making improvements to properties.

(g) Structures that remain boarded up for an extended period of time also exert a blighting influence and contribute to the decline of the neighborhood by decreasing property values, discouraging persons from moving into the neighborhood, and encouraging persons to move out of the neighborhood.

(h) Vacant structures often continue to deteriorate to the point that demolition of the structure is required, thereby decreasing available housing in a community and further contributing to the decline of the neighborhood.

(i) The blighting influence of vacant, deteriorated structures adversely affects the tax revenues of local government.

(j) The general assembly finds that vacant, deteriorated structures

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1 create a serious and substantial problem in urban areas and are ~~public~~
2 nuisances.

3 (k) In recognition of the problems created in a community by vacant
4 structures, the general assembly finds that vigorous and disciplined
5 action should be taken to ensure the proper maintenance and repair of
6 vacant structures and encourages local governmental bodies to adopt
7 maintenance and repair standards appropriate for the community in
8 accordance with this chapter and other statutes.

9 SECTION 14. IC 36-7-9-17, AS AMENDED BY P.L.88-2009,
10 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
11 JULY 1, 2010]: Sec. 17. (a) The department, acting through its
12 enforcement authority, a person designated by the enforcement
13 authority, or a community organization may bring a civil action
14 regarding unsafe premises in the circuit, superior, or municipal court
15 of the county. The department is not liable for the costs of such an
16 action. The court may grant:

17 (1) one (1) or more of the kinds of relief authorized by sections 18
18 through 22 of this chapter; or

19 (2) **any other relief considered appropriate by the court.**

20 ~~(b) A civil action may not be initiated under this section before the~~
21 ~~final date of an order or an extension of an order under section 5(c) of~~
22 ~~this chapter requiring:~~

23 ~~(1) the completion; or~~

24 ~~(2) a substantial beginning toward accomplishing the completion;~~
25 ~~of the required remedial action.~~

26 ~~(c) (b) A community organization may not initiate a civil action~~
27 ~~under this section if (1) the enforcement authority or a person~~
28 ~~designated by the enforcement authority has filed a civil action under~~
29 ~~this section regarding the unsafe premises; or (2) the enforcement~~
30 ~~authority has issued a final order that the required remedial action has~~
31 ~~been satisfactorily completed. However, this subsection does not~~
32 ~~prohibit a community organization from initiating a civil action~~
33 ~~under this section concerning any condition of the unsafe premises~~
34 ~~not covered by the final order.~~

35 ~~(d) (c) A community organization may not initiate a civil action~~
36 ~~under this section if the real property that is the subject of the civil~~
37 ~~action is located outside the specific geographic boundaries of the area~~
38 ~~defined in the bylaws or articles of incorporation of the community~~
39 ~~organization.~~

40 ~~(e) (d) At least sixty (60) thirty (30) days before commencing a~~
41 ~~civil action under this section, a community organization must issue a~~
42 ~~notice by certified mail, return receipt requested, that:~~

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- 1 (1) specifies:
- 2 (A) the nature of the alleged nuisance;
- 3 (B) the date the nuisance was first discovered;
- 4 (C) the location on the property where the nuisance is
- 5 allegedly occurring;
- 6 (D) the intent of the community organization to bring a civil
- 7 action under this section; and
- 8 (E) the relief sought in the action; and
- 9 (2) is provided to:
- 10 (A) the owner of record of the premises;
- 11 (B) tenants located on the premises; **and**
- 12 ~~(C) the enforcement authority; and~~
- 13 ~~(D)~~ (C) any person that possesses an interest of record.
- 14 ~~(f)~~ (e) In any action filed by a community organization under this
- 15 section, a court may award reasonable attorney's fees, court costs, and
- 16 other reasonable expenses of litigation to the prevailing party.
- 17 ~~(g)~~ (f) If a second or subsequent civil judgment is entered under this
- 18 section:
- 19 (1) against an owner of a known or recorded fee interest, life
- 20 estate, or equitable interest as a contract purchaser of property;
- 21 and
- 22 (2) during any two (2) year period;
- 23 a court may order the owner to pay treble damages based on the costs
- 24 of the ordered action. The second or subsequent civil judgment may
- 25 relate to the same property or a different property held by the owner.

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